

## **Attachment D**

### **GENERAL TERMS AND CONDITIONS**

#### **DEFINITIONS**

As used throughout this agreement, the following terms will have the meaning set forth below:

“**Agency**” means the Department of Retirement Systems of the state of Washington, any division, section, office, unit, or other entity of the Department of Retirement Systems, or any of the officers or other officials lawfully representing the Department of Retirement Systems.

“**Agent**” means the Director of DRS, and/or the delegate authorized in writing to act on the Director’s behalf.

“**Business day**” excludes Saturdays, Sundays, and state holidays.

“**Vendor**” means that firm, provider, organization, individual, or other entity providing software under this contract, and will include all employees of the Vendor.

#### **ADVANCE PAYMENTS PROHIBITED**

No payments in advance of or in anticipation of goods or services to be provided under this contract will be made by the Agency.

#### **AMENDMENTS**

This contract may be amended by mutual agreement of both parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

#### **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, Public Law 101-336, Also Referred to as the "ADA" 28 CFR Part 35**

The Vendor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

#### **ASSIGNMENT**

Neither this contract, nor any claim arising under this contract, will be transferred or assigned by the Vendor without prior written consent of the Agency.

#### **ATTORNEY’S FEES**

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

## **CHANGES TO CONTRACT**

The Director of the Agency may, at any time, by written notification to Vendor, and without notice to any known guarantor or surety, make changes within the general scope of services to be performed under the contract. If any such changes cause an increase or decrease in the cost of, or the time required for performance of, this contract, an equitable adjustment may be made in the contract price, or period of performance, or both, and the contract will be modified in writing accordingly. Any claim by Vendor for adjustment under this clause must be asserted within thirty (30) calendar days from the date of receipt by Vendor of the notice of the change; **provided**, the Director of the Agency may, if the Director decides that the facts justify each action, receive and act upon such claim asserted at any time prior to final payment under the contract. Failure to agree to any adjustment will be a dispute concerning a question of fact within the meaning of the "Dispute" section under this contract. However, nothing in this clause excuses Vendor from proceeding with the contract as changed.

## **CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

The Vendor will not use or disclose any information concerning the Agency, the Agency's business affairs, relations with their clientele and employees, member or participant data, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

All information and data released under the administration of this contract is subject to the safeguarding and inventory requirements under this section, and must be safeguarded against unauthorized release and negligent treatment or use. Agency will notify Vendor of any data provided that is considered confidential by the Agency and should be treated with additional safeguards as such under this section. If Agency and Vendor mutually agree that confidential information and data to be provided is necessary to the performance of the contract, Agency will transfer the confidential information and data to the Vendor. All data transferred by electronic means will be encrypted or password protected, or both.

Confidential information and data includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, dates of birth, individual pension-related information, driver's license numbers, personnel information, bank information, credit or debit card information, agency security data, or information identifiable to an individual that relates to any of these types of information, any individual identifiable financial information, or any information required to be kept confidential pursuant to RCW 42.56.590. In the event of a breach of security resulting in the unauthorized disclosure of the confidential information, Vendor agrees to comply with these provisions as applicable.

Vendor agrees to hold confidential information and data in strictest confidence and not to use confidential information and data for any purpose other than the performance of this contract, to release confidential information only with the written permission of the Agency and only to authorized subcontractors requiring such information for the purposes of carrying out this contract, and not to release, divulge, publish, transfer, sell, disclose or otherwise make this confidential information and data known to any other party without Agency's express written

consent or as provided by law. Vendor will avoid loss of confidential information and data released under the administration of this contract. Vendor agrees to release such confidential information and data only to subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Agency.

Vendor agrees to maintain physical, electronic, and managerial safeguards to prevent loss of or unauthorized access to confidential information and data. Unauthorized access means any access to the Agency's information and data which access has not been approved by the Agency.

Vendor will maintain the security of all confidential information and data, as well as the security of all resources for the use and maintenance of all confidential information and data, including, but not limited to, paper files, desktop computers and their hardware, laptops and their hardware, software, floppy disks, compact discs, and personal digital assistants.

Should Vendor lose or misplace the Agency's information and data, or should there be any unauthorized access, use, damage, modification, release, disclosure, or negligent treatment of the confidential information, Vendor will notify the Agency's Contract Manager as soon as practical but no more than four (4) hours from notice of the loss or the unauthorized access to the data.

The Agency will consider a force majeure with respect to the notification process. Vendor will assist the Agency with all investigatory efforts concerning a loss of data, unauthorized access to data, or a breach of confidentiality. Failure to promptly notify or assist the Agency may be considered a breach of this provision.

Immediately upon expiration or termination of this Contract, Agency will notify Vendor of any items that should be destroyed, deleted, or returned to the Agency. Vendor will certify to Agency that Vendor has destroyed, deleted, or returned to Agency all requested confidential information and data. "Destroyed" means shredded or otherwise reduced so that the data therein cannot be identified. "Deleted" means moved to a secure file server and expunged from each computer or laptop hard drive.

Any breach of this provision may result in termination of the contract and the demand for return or destruction as indicated in the previous paragraph of all confidential information and data released to Vendor for the purposes of this contract. The Vendor agrees to indemnify and hold harmless the Agency for any damages related to the Vendor's unauthorized use or disclosure of confidential information and data. Vendor acknowledges Vendor's obligations pursuant to RCW 42.56.590.

### **CONFLICT OF INTEREST**

Vendor warrants that it presently has no interest, and will not acquire any interest (direct or indirect), which would conflict in any significant manner or degree with the performance of service required under this contract. Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Vendor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, chapter 42.52 RCW; or any similar statute involving the Vendor in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the Agency will be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a breach of the contract by the Vendor. The rights and remedies of the Agency provided for in this clause will not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause will be an issue and may be reviewed as provided in the “Disputes” clause of this contract.

### **CONSTRUCTION**

Nothing in this Contract shall be construed to create a right enforceable by or in favor of any third party.

### **COVENANT AGAINST CONTINGENT FEES**

The Vendor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Vendor for securing business.

The Agency will have the right, in the event of breach of this clause by the Vendor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

### **DISALLOWED COSTS**

The Vendor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

### **DISPUTES**

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with Agent.

1. The request for a dispute hearing must:
  - a. Be in writing;
  - b. State the disputed issue(s);
  - c. State the relative positions of the parties;
  - d. State the Vendor’s name, address, and the contract number; and
  - e. Be mailed to the Agent and the other party’s (respondent’s) contract manager within three (3) business days after the parties agree that they cannot resolve the dispute.
2. The respondent will send a written answer to the requester’s statement to both the agent and the requester within five (5) business days.

3. The Agent will review the written statements and reply in writing to both parties within ten (10) business days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract will be construed to limit the parties' choice of a mutually acceptable Alternative Dispute Resolution method in addition to the dispute resolution procedure outlined above.

### **ENTIRE AGREEMENT**

This Contract, all attachments, and any future amendments hereto, constitute the entire agreement between the Vendor and the Agency and no other statements or representations, written or oral, shall be deemed a part hereto.

### **EXTENSION**

The Agency reserves the option to extend this contract. In the event that the Agency elects to exercise its extension option, it will notify the Vendor of its decision to extend by giving written notice to the Vendor at least thirty (30) calendar days in advance of the current expiration date. Any extension of this contract will be in accordance with pricing, terms, and conditions as mutually agreed upon in writing by both parties.

### **GOVERNING LAW**

This contract will be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder will be in the Superior Court for Thurston County.

### **INDEPENDENT CAPACITY OF THE VENDOR**

The parties intend that an independent relationship will be created by this contract. The Vendor and his or her employees or agents performing under this contract are not employees or agents of the Agency. The Vendor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the state of Washington by reason hereof, nor will the Vendor make any claim of right, privilege or benefit that would accrue to such employee under law.

### **LICENSING, ACCREDITATION AND REGISTRATION**

The Vendor will comply with all applicable local, state and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

### **LIMITATION OF AUTHORITY**

Only the Agent or Agent's delegate by writing (delegation to be made prior to action) will have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or

any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

### **PRIVACY**

Confidential personal information and data including, but not limited to, "Protected Health Information," and/or information governed by RCW 42.56.590, collected, used, or acquired in connection with this contract will be protected against unauthorized use, disclosure, modification or loss. Vendor will ensure its directors, officers, employees, subcontractors or agents use confidential personal information solely for the purposes of accomplishing the services set forth herein. Vendor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Vendor agrees to indemnify and hold harmless the Agency for any damages related to the Vendor's unauthorized use of personal information or the loss of Agency's confidential information and data.

Should any unauthorized use, disclosure, modification, or loss occur, Vendor will notify the Agency's Contract Manager as soon as practical but no more than four (4) hours from notice of unauthorized use, disclosure, modification, loss, or any other breach of privacy. The Agency will consider a force majeure with respect to the notification process. Vendor will assist the Agency with all investigatory efforts concerning a unauthorized use, loss, or any breach of privacy. Failure to promptly notify or assist the Agency may be considered a breach of this provision.

### **PUBLICITY**

The Vendor agrees to submit to the Agency all advertising and publicity matters relating to this contract wherein the Agency's name is mentioned or language used from which the connection of the Agency's name may, in the Agency's judgment, be inferred or implied. The Vendor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

### **RECORDS MAINTENANCE**

The Vendor will maintain books, records, documents, data and other evidence relating to this contract, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

Vendor will retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, will be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records will be retained until all litigation, claims or audit findings involving the records have been resolved.

### **REGISTRATION WITH DEPARTMENT OF REVENUE**

The Vendor will complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

### **RIGHTS AND REMEDIES**

The rights and remedies of the Department provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

### **SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the one hundred eighty (180) day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

### **SEVERABILITY**

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of the contract.

### **TAXES**

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Vendor or its staff will be the sole responsibility of the Vendor.

### **TERMINATION FOR CAUSE**

In the event the Agency determines the Vendor has failed to comply with the conditions of this contract in a timely manner, or the Vendor's software performance falls below prevailing industry standards, the Agency has the right to suspend or terminate this contract.

Before suspending or terminating the contract, the Agency will notify the Vendor in writing of the need to take corrective action and allow an opportunity to cure. The timeframe for curing will be determined by the Agency by reasonably weighing several factors relevant to the default which will include, but not be limited to: how critical performance failure rectification is to the Agency operations; lead-time afforded to the Vendor to complete the performance or assignment in the first instance; repetition, if any, of the particular performance default; accumulation in number, if any, of other performance defaults which the Vendor has timely cured; and, attribution of the default to willful disregard or carelessness on the part of the Vendor. If

corrective action is not taken within the timeframe established by the Agency. the contract may be terminated or suspended.

In the event of termination or suspension, the Vendor will be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The Agency reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Vendor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Vendor or a decision by the Agency to terminate the contract. A termination will be deemed a "Termination for Convenience" if it is determined that the Vendor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault, or negligence. The rights and remedies of the Agency provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

#### **TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this contract, the Agency or Vendor may, by one hundred eighty (180) days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency will be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

#### **WAIVER**

Waiver of any default or breach will not be deemed a waiver of any subsequent default or breach. Any waiver will not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the Agency.